

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 In the matter of:)	DOCKET NO. S-03566A-04-0000
9 NOEL EUGENE CULLISON and BARBARA)	
10 CULLISON, husband and wife,)	NOTICE OF OPPORTUNITY FOR
11 3108 East Siesta Lane)	HEARING REGARDING PROPOSED
12 Phoenix, AZ 85050)	ORDER TO CEASE AND DESIST,
13 SOLUTIONS, SOURCES, & CONSULTING,)	ORDER FOR RESTITUTION, FOR
14 LLC)	ADMINISTRATIVE PENALTIES AND
15 3108 East Siesta Lane)	FOR OTHER AFFIRMATIVE ACTION
16 Phoenix, AZ 85050)	
17 ENERGY SAVINGS SOLUTION, INC.)	
18 3108 East Siesta Lane)	
19 Phoenix, AZ 85050)	
20 Respondents.)	

21 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

22 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

23 The Securities Division ("Division") of the Arizona Corporation Commission
24 ("Commission") alleges that Respondents have engaged in acts, practices and transactions, which
25 constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

26 **I**

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the
Arizona Constitution, and the Securities Act.

II.

RESPONDENTS

2. Respondent Noel Eugene Cullison resides at 3108 East Siesta Lane, Phoenix, AZ 85050.

3. Respondent Solution, Sources, and Consulting, LLC ("SSC") is an Arizona limited liability company, located at 3108 East Siesta Lane, Phoenix, AZ 85050. Cullison formed SSC and is a member of it.

4. Respondent Energy Savings Solution, Inc. ("ESS") is an Arizona corporation, located at 3108 East Siesta Lane, Phoenix, AZ 85050. Cullison is ESS's president, secretary and treasurer. The Commission administratively dissolved ESS on July 6, 2004, for failure to file its annual report.

5. Barbara Cullison was at all relevant times the spouse of Cullison. Barbara Cullison is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

6. At all times relevant, Cullison was acting for his own benefit, and for the benefit or in furtherance of the marital community.

7. Cullison, SSC and ESS may be collectively referred to as "Respondents." Barbara Cullison may be referred to as Respondent Spouse.

III.

FACTS

8. Beginning in 1994, Respondents offered stock, promissory notes or investment contracts to investors. Respondents raised at least \$1,700,000 from at least 16 investors, most of whom are Arizona residents.

1 9. Cullison was an Arizona licensed insurance agent for Northwest Mutual Life
2 Insurance Company ("Northwestern Mutual") until July 2001 when he failed to renew his license.
3 Most of the investors were clients of Northwestern Mutual and Cullison.

4 10. Cullison offered several investment opportunities to the investors. With one
5 investment, he told investors that he had a personal investment account at Northwestern Mutual
6 that paid 8.8%. He told investors that if they provided him funds, he would place their funds in
7 his account and pay them that interest. Those investors who accepted this opportunity received a
8 promissory note signed by Cullison for the amount invested. Cullison did not provide any
9 documents to investors regarding the alleged account at Northwestern Mutual. In fact, Cullison
10 had no such account at Northwestern Mutual in which he could place investor funds.

11 11. Cullison told other investors that his company, SSC, had contracts to provide ice
12 machines to U.S. Navy ships in San Diego, California. He told investors that SSC would use the
13 funds as capital for the company, to build facilities to service the contracts or to purchase the
14 machines to be sold to the Navy. Upon information and belief, SSC had no contracts to provide
15 any equipment or services to the Navy.

16 12. Cullison solicited other investors with an investment opportunity in ESS. He told
17 them that ESS, which he owned, was marketing a product which would prevent power surges in
18 electrical current to buildings. Cullison offered stock in ESS to prospective investors. At least one
19 investor received a letter confirming that he owned a percentage of the company, although no
20 shares were issued to him. Other investors in ESS received notes signed by Cullison.

21 13. Cullison told other investors that he had the opportunity to broker the sale of a
22 group of nursing homes in the Midwest. He informed the investors that he would receive a fee
23 upon the completion of the transaction. He told them that he would use to money from investors
24 to fund expenses incurred in attempting to arrange the sale.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

22. From on or about 1994, Respondents offered or sold securities in the form of stock, notes and investment contracts within or from Arizona.

23. The securities referred to above were not registered pursuant to the provisions of Articles 6 or 7 of the Securities Act.

24. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

25. Respondents offered or sold securities within or from Arizona, while not registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

26. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

27. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

1 a) Falsely informing investors that Cullison had a personal investment account at
2 Northwestern Mutual in which he could place investor funds and that he would place their money
3 in that account;

4 b) Failing to provide full disclosure regarding the investment including the risk
5 involved in the investments, any disclosure statements, prospectuses or financial statements;

6 c) Failing to inform investors of SSC or ESS of those entities lack of income;

7 d) Falsely informing the SSC investors that SSC had approved contracts to supply
8 equipment to the U.S. Navy;

9 e) Failing to inform investors that Cullison used at least some of their investment to
10 pay his personal expenses;

11 f) Failing to inform investors that the source of payment of interest on their
12 investments was income Cullison earned in his insurance business, from investors' own principal
13 or from additional investor funds, rather than the project that Cullison informed investors that the
14 money would be used for; and

15 g) Failing to inform investors of the risk involved in the investment, given the lack of
16 track record of the companies.

17 28. This conduct violates A.R.S. § 44-1991.

18 29. Cullison directly or indirectly controlled SSC and ESS within the meaning of A.R.S.
19 § 44-1999. Therefore, Cullison is liable to the same extent as SSC and ESS for their violations of
20 A.R.S. § 44-1991.

21 **VII.**

22 **REQUESTED RELIEF**

23 The Division requests that the Commission grant the following relief against Respondents:

24 1. Order Respondents to permanently cease and desist from violating the Securities
25 Act, pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of Noel and Barbara Cullison be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Respondents, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any Respondent requests a hearing, the Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Each Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made, the

1 Commission may, without a hearing, enter an order against each Respondent granting the relief
2 requested by the Division in this Notice of Opportunity for Hearing.

3 Persons with a disability may request a reasonable accommodation such as a sign language
4 interpreter, as well as request this document in an alternative format, by contacting Yvonne L.
5 McFarlin, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-
6 mail ymcfarlin@cc.state.az.us. Requests should be made as early as possible to allow time to
7 arrange the accommodation.

8 **IX.**

9 **ANSWER REQUIREMENT**

10 Pursuant to A.A.C. R14-4-305, if any Respondent or Respondent Spouse requests a
11 hearing, Respondent or Respondent Spouse must deliver or mail an Answer to this Notice of
12 Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W.
13 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
14 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
15 accompany the Answer. A cover sheet form and instructions may be obtained from
16 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
17 www.cc.state.az.us/utility/forms/index.htm.

18 Additionally, Respondent or Respondent Spouse must serve the Answer upon the
19 Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by
20 hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3^d Floor,
21 Phoenix, Arizona, 85007, addressed to Mark Dinell.

22 The Answer shall contain an admission or denial of each allegation in this Notice and the
23 original signature of each Respondent, Respondent Spouse or Respondent's attorney. A statement
24 of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An
25 allegation not denied shall be considered admitted.

1 When Respondent or Respondent Spouse intends in good faith to deny only a part or a
2 qualification of an allegation, Respondent or Respondent Spouse shall specify that part or
3 qualification of the allegation and shall admit the remainder. Respondent or Respondent Spouse
4 waives any affirmative defense not raised in the answer.

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/s/ Phillip Hofling
Phillip Hofling
Assistant Director of Securities